IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3202 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER - Petitioner(s)

Versus

VIJAYSINH DEVISINH VAGHELA - Respondent(s)

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Appearance :

Ms.Rita Chandarana, AGP for Petitioner(s) : 1,
MRS DT SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/09/2005

CAV JUDGMENT

1.By filing this petition under Article 226/227 of the Constitution of India, the petitioner – Dy.Executive Engineer – Irrigation Sub-Division (State), Surendranagar has prayed to issue a writ of certiorari or any other appropriate writ, order or direction

quashing and setting aside the impugned judgment and award dated 04.09.1991 passed by the Presiding Officer, Labour Court, Surendranagar, by which the Presiding Officer, Labour Court, Surendranagar has set aside the removal order passed against the respondent – workman and directed the petitioner to reinstate the respondent with continuity of service and also awarded 40% back wages.

2. It is the contention of the learned Assistant Government Pleader appearing for the petitioner that mere completion of 240 days of continuous service in a year may not itself be a ground for directing an order of regularization. It is submitted by the learned AGP that the respondent was employed purely on daily wages basis which was seasonal in character. It is submitted that the respondent himself had stopped coming for work from 8.11.1986, as, there was no work after the aforesaid date. It is submitted by the learned AGP that the learned Presiding Officer of the Labour Court ought not to have passed the order directing reinstatement of the respondent in service with 40% of back wages. It is, therefore, requested to allow the present petition.

3. On the other-hand, Ms.D.T.Shah, learned advocate appearing for the respondent has opposed this petition

and has submitted that the Labour Court has passed the order after considering the evidence on record and this Court in a petition under Article 227 of the Constitution of India may not re-appreciate the evidence. It is, therefore, requested to dismiss the present petition.

4. Heard the learned advocates for the parties.

5. This Court (Coram: A.P.Ravani & K.R.Vyas,JJ) by order dated 7.5.1992 directed the petitioner to pay 50% back wages of the amount awarded by the Labour Court. It is not in dispute that the respondent was working with the petitioner and his services came to be terminated on 8.11.1986. Ultimately, the respondent workman raised the industrial dispute which was numbered as Reference (LCA) No.10 of 1990. The Labour Court, Surendranagar, after considering the evidence on record, by its judgment and award dated 4.9.1991 directed the petitioner to reinstate the respondent workman in service with continuity of service and also directed to pay 40% back wages of the last drawn salary from 1.5.1989.

6. As stated above, this Court (Coram: A.P.Ravani and K.R.Vyas,JJ) by order dated 7.5.1992 directed the petitioner to pay 50% back wages of the amount awarded

by the Labour Court and also refused the interim relief against reinstatement as back as in 1992. Now, the question, which is required to be considered by this Court, is with regard to remaining 50% back wages of the amount awarded by the Labour Court. Considering the fact that the petitioner is a public body and State Authority coupled with the fact that the respondent was not a permanent employee, and, therefore, considering all these facts, it would meet ends of justice in the present case if instead of giving the back wages as awarded by the Labour Court, the workman concerned is given the back wages as per the order passed by this Court on 7.5.1992, i.e. 50% back wages of the amount awarded by the Labour Court and that has already been ordered to be paid by this Court vide its order dated 7.5.1992, as stated above.

7. Under the circumstances, now nothing further is required to be done in this matter. In that view of the matter, this petition is partly allowed. The judgment and award of the Labour Court is modified to the extent indicated above. Rule is made absolute to the aforesai extent. No costs.

(Sharad D.Dave,J)

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